

JUDICIAL COUNCIL  
OF THE FIRST CIRCUIT

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IN RE  
COMPLAINT NOS. 01-16-90034 and 01-16-90042

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BEFORE  
Lynch and Kayatta, Circuit Judges  
Laplante, McConnell, and Levy, District Judges

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ORDER

ENTERED: NOVEMBER 30, 2017

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Petitioner, a pro se litigant, has filed a petition for review of Judge Torruella's order dismissing his complaint(s), under 28 U.S.C. § 351(a), against a First Circuit magistrate judge and district judge. Petitioner alleged misconduct in connection with a civil matter over which the subject judges presided. Judge Torruella dismissed the complaint(s) as baseless and not cognizable.<sup>1</sup>

In the original complaint(s), petitioner alleged that the judges violated petitioner's rights to due process and to an impartial tribunal while presiding over his case, and that the federal courts are biased against minorities. Petitioner further alleged that the district

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<sup>1</sup> Petitioner filed a previous misconduct complaint against a First Circuit bankruptcy judge in connection with a related proceeding. The complaint was dismissed, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(B), and the First Circuit Judicial Council affirmed the order of dismissal. See Lynch, C.C.J., Order, In Re: Judicial Misconduct Complaint No. 01-13-90012, October 31, 2013, and Judicial Council of the First Circuit, Order, In Re: Judicial Misconduct Complaint No. 01-13-90012, January 16, 2014.

judge improperly delayed the civil proceeding and that the judge's clerk refused to docket one of petitioner's filings.

Petitioner alleged that the magistrate judge exceeded her statutory authority and had a familial and prior professional relationship with a defendant in the case. Petitioner contends that, as result of this relationship and in exchange for financial remuneration from another defendant, the magistrate judge issued rulings in defendants' favor. Petitioner also alleged that the magistrate judge had a conflict of interest based on a professional affiliation with a witness. Petitioner concluded that, based on these relationships, the magistrate judge should have recused from petitioner's case.

In dismissing the complaint(s), Judge Torruella first explained that the judicial misconduct procedure does not provide an avenue for obtaining an order in a pending or closed case, including the recusal of a judge. See 28 U.S.C. § 351 *et seq.* and Rules for Judicial-Conduct and Judicial-Disability Proceedings (Rules of Judicial-Conduct), Rules 11, 19, and 20.

Judge Torruella dismissed petitioner's allegations of bias, conflict of interest, and other wrongdoing as baseless. Based on his review of the record, Judge Torruella observed that the magistrate judge and district judge issued several orders in petitioner's case, none of which suggested bias or other wrongdoing. Judge Torruella further observed that petitioner offered no specific facts indicating that the magistrate judge had a relationship with any party or witness in the case that would undermine the magistrate

judge's impartiality. The Judge determined that petitioner's claims that the magistrate judge abused judicial authority or exhibited bias were presented without any basis in fact.

Judge Torruella similarly observed that the reviewed record did not support petitioner's claims that the district judge exhibited racial or any other bias in presiding over petitioner's proceeding. Because the reviewed record, including the misconduct complaint(s) and the court's rulings in petitioner's case, was devoid of any evidence of bias or other judicial wrongdoing, Judge Torruella dismissed the complaint(s) as baseless, pursuant to 28 U.S.C. § 352(b)(1)(A)(iii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(D).

As there was no evidence of improper judicial motive, Judge Torruella dismissed petitioner's objections to the court's orders, including the magistrate judge's failure to recuse and the judge's alleged delays in issuing rulings, as not cognizable, pursuant to 28 U.S.C. § 352(b)(1)(A)(ii). See also Rules of Judicial-Conduct, Rule 11(c)(1)(B); and Rule 3(h)(3)(A) and (B) ("Cognizable misconduct . . . does not include . . . an allegation that is directly related to the merits of a decision or procedural ruling. An allegation that calls into question the correctness of a judge's ruling, including a failure to recuse, without more, is merits-related . . . [Nor does cognizable misconduct include] an allegation about delay in rendering a decision or ruling . . .").

Last, Judge Torruella dismissed petitioner's allegation of error or wrongdoing by the docketing clerk as not indicative of judicial misconduct. See 28 U.S.C. §

352(b)(1)(A)(i), and Rules of Judicial-Misconduct, Rule 11(c)(1)(A). See also Lynch, C.C.J., Order, In Re: Complaint No. 01-12-90015, July 11, 2012, at 3-4, citing Boudin, C.C.J., Amended Order, In Re: Judicial Misconduct Complaint No. 406, September 5, 2005, at 3.

In the petition for review, petitioner repeats his allegations that the magistrate judge and district judge violated petitioner's rights to due process and to an impartial tribunal, that the magistrate judge should have recused, and that the judiciary is biased.

Petitioner also alleges that Judge Torruella was disqualified from reviewing his complaint(s), based on an unrelated and unsubstantiated violation of the Code of Conduct for U.S. Judges (Code of Conduct) and because he was a member of the panel that ruled in one of petitioner's related appeals. Petitioner further asserts that, in reviewing the misconduct complaint(s), Judge Torruella misunderstood the facts, applied the incorrect standard of review, disclosed confidential information, and protected an appellate judge, who petitioner alleges should have recused from the related appeal.<sup>2</sup> Petitioner requests "retroactive recusal" of the disqualified judges and asks that his misconduct complaint(s) be transferred to the Judicial Conference Committee on Judicial Conduct and Disability (Committee on Conduct and Disability).

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<sup>2</sup> Petitioner contends that this appellate judge was disqualified from the appeal because the judge had worked at the same law firm as the state court judge in a related state civil case. Although such a relationship would not warrant recusal, see Code of Conduct for U.S. Judges, Canon 3(C), this allegation is not addressed because the judge was not named in the pending matter.

First, as Judge Torruella explained, the judicial misconduct procedure does not provide an avenue for affording relief in a pending or closed case, including the recusal of a judge. See 28 U.S.C. § 351, *et seq.*, and Rules of Judicial-Conduct, Rules 11, 19, and 20. Nor does the procedure provide a mechanism for the transfer of a judicial misconduct complaint to the Committee on Conduct and Disability where, as here, the complaint(s) did not warrant the appointment of a special committee. See Rules of Judicial Conduct, Rule 21 (enumerating specific instances when a misconduct complainant may petition for review of a judicial council order).

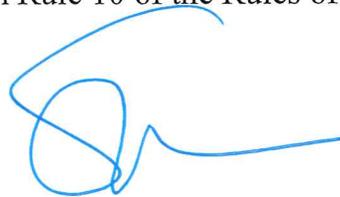
Moreover, Judge Torruella's participation in petitioner's appeal does not disqualify him from reviewing the misconduct complaint(s). See Rules of Judicial-Conduct, Rule 25. See also Committee on Conduct and Disability, Memorandum of Decision, In Re: Complaint of Judicial Misconduct No. 09-01, October 26, 2009, at 21-22 ("If under all of the circumstances, including prior knowledge of the case and even a previously held opinion, the judge believes that he or she can be 'fair-minded' in his or her participation, [citation omitted], recusal is not warranted and the judge should fulfill his or her duty to participate [in the misconduct matter]."). Nor does petitioner provide any facts suggesting that Judge Torruella disclosed confidential information or committed any ethical violation that would disqualify him from reviewing petitioner's misconduct complaint(s).

With respect to petitioner's underlying claims, the petition for review offers no information that would undermine Judge Torruella's determinations. There remains no evidence to support petitioner's claims of bias, conflict of interest, or other wrongdoing by either the magistrate judge or the district judge. The claims derive exclusively from petitioner's objections to the substance and timing of the court's orders. Therefore, the complaint(s) were properly dismissed as not cognizable and as baseless, pursuant to 28 U.S.C. §§ 352(b)(1)(A)(ii) and 352(b)(1)(A)(iii), respectively. See also Rules of Judicial-Conduct, Rules 11(c)(1)(B) and 11(c)(1)(D).

For the reasons stated herein, the order of dismissal issued in Judicial Misconduct Complaint Nos. 01-16-90034 and 01-16-90042 is affirmed. See Rules of Judicial-Conduct, Rule 19(b)(1).

Finally, petitioner should be aware that continued attempts to use the judicial misconduct process to challenge the substance of judicial rulings that have been the subject of previous unsuccessful misconduct complaints will precipitate issuance of an order to show cause in accordance with Rule 10 of the Rules of Judicial-Conduct.

November 30, 2017  
Date



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Susan Goldberg, Secretary